

(2007) 03 BOM CK 0100

In the Bombay High Court

Case No : Civil Rev. Application No. 1193 of 1999

Gwaldas Shivkisanji Lakhotia

APPELLANT

Vs

Bapurao Arjunji Bandabuche

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 36

Citation : (2007) 3 ALLMR 544 : (2007) 4 CivCC 272 : (2007) 4 MhLj 698 :
(2009) 5 RCR(Civil) 509 : (2008) 1 RCR(Rent) 95

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : M.G. Bhangde and R.M. Bhangde, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—This revision is preferred by the plaintiff, whose application for execution of order passed under Order 15-A, Rule 1 of CPC was rejected.

2. The plaintiff had instituted a suit for ejectment and possession along with arrears of rent. While suit was pending, the plaintiff applied under Order 15-A Rule 1 of CPC for a direction to defendant/tenant to deposit the arrears of rent and to continue to deposit Rs. 156/- per month. This order was passed on 27-9-1988. A writ petition filed by the defendant against the order granting permission to the plaintiff to terminate the tenancy was allowed and the order of Appellate Court was set aside. As a result of this, the suit came to be dismissed as infructuous. Later, plaintiff filed Darkasth No. 16/98 and sought to recover Rs. 18,490/- as arrears of rent on the basis of the order on application under Order 15-A, Rule 1 of Code of Civil Procedure. The said application for execution is rejected, hence this revision.

3. This revision itself is not maintainable. Application for execution came to be rejected. The proceedings before the lower Court have, therefore, in fact come to

an end. Now, had the order been passed in favour of the plaintiff, the proceeding would not have terminated but required to be prosecuted further. The law on this point is now well settled. I hold that this revision is not maintainable.

4. Be that as it may, since the matter was heard, I would decide the question whether the order passed under Order 15-A of CPC could be executed.

4-A. The learned Counsel for the plaintiff submitted that every order passed can be executed if it is executable. He contended that Section 36 of the CPC enables the Court to execute such order as if it were a decree. Order has been defined in CPC as follows--

"Order" means the formal expression of any decision of a Civil Court which is not a decree.

Section 36 certainly says that all provisions with regard to execution of decree shall apply to execution of the order. In view of this, there is no difficulty in accepting that an order passed by Court can be executed, provided it is an executable order. The matter, however, does not end here.

5. The impugned order was passed by the Court under Order 15-A of the CPC directing the defendant to pay rent and deposit arrears. No fault can be found with such a direction. In this case, the defendant failed to obey the order and failed to deposit the arrears. The consequence of such failure is given in the same Rule 1 of Civil Procedure Code. The Rule says that if such order is not obeyed, the defence shall be struck out. The learned Counsel for the applicant/plaintiff contended that striking out of defence is a mode of enforcement while execution by attachment is mode of satisfaction. In 1999 (1) SCC 405, Smt. Kuldeep Kaur v. Surinder Singh, it is observed as follows:

6. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a "mode of enforcement". It is not a "mode of satisfaction" of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realized that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance "without sufficient cause" to comply with the order. It would indeed be strange to hold that a person who "without reasonable cause" refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears.

6. Therefore, even though the remedy by way of striking out of defence is

available, that does not deprive the plaintiff to resort to mode of satisfaction. Ordinarily, therefore, an order can be executed for satisfaction. Still, however, it has to be seen whether any interim order in any suit or appeal can be executed after the suit or appeal has come to an end. The law is well settled that when main lis comes to an end, all interim orders merge into that final order. Once, those interim orders merge into that final order, the interim order cannot be executed. To my mind, the interim orders do not survive once the main lis is decided by Court and no more remains executable. Here, the suit itself is dismissed hence none of the orders passed in the suit could be said to have" survived. This order, therefore, to my mind is not executable. I therefore, see no merit in the revision. It is dismissed.